

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

BERKELEY BANK & TRUST

Plaintiff

Vs

**BANCREDITO INTERNATIONAL BANK &
TRUST**

Defendant

CIVIL NO:

DECLARATORY JUDGMENT

COMPLAINT

TO THE HONORABLE COURT

COMES NOW Berkeley Bank & Trust, (hereinafter “Berkeley”) by and through its attorneys and respectfully state and pray as follow:

I. THE PARTIES

1.1 Berkeley is a banking institution established under the laws of Saint Lucia with its principal place of business at Unit 104 Johnsons Centre, No 2, Bella Rosa Road, Gross Islet, Saint Lucia.

1.2 Bancrédito International Bank & Trust (hereinafter “Bancrédito”) is a banking institution established under the laws of Puerto Rico with its principal place of business at 270 Muñoz Rivera Ave., 5th Floor, Suite 504, Hato Rey, Puerto Rico, 00918.

II. JURISDICTION

2.1 This court has jurisdiction over this action pursuant to 28 U.S.C. § 1332, because Berkeley and Bancrédito are citizens of different nations and the amount in controversy exceeds \$75,000.00.

2.2 Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1391(c).

III. FACTUAL BACKGROUND

3.1 Berkeley and Bancrédito have a long-standing commercial relationship. Berkeley is a client of Bancrédito where it holds a deposit account and Bancrédito is also a client of Berkeley.

3.2 Upon information and belief, on or about August 9, 2022, Bancrédito and the Office of the Commissioner of Financial Institutions of Puerto Rico (“OCIF”) entered into a voluntary Plan of Liquidation and Dissolution.

3.3 According to the Plan of Liquidation and Dissolution (the “Plan”), Bancrédito through its designated administrator, Driven Administrative Services LLC, had the obligation to within the first thirty (30) day after the effective date of August 9, 2022, pay the funds property of its depositors, that are Not Related Persons¹, held in deposit at Bancrédito.

3.4 According to the Plan as executed and approved by OCIF, Berkeley is not a Related Person, thus, Berkeley was entitled to receive its funds deposited at Bancrédito within 30 days of the “effective date”². Bancrédito failed to pay Berkeley its funds under the deposit.

3.5 On or about November 29, 2022, Bancrédito sent Berkeley a demand letter requesting the transfer to Bancrédito the sum of Twenty-Six Million Dollars (\$26,000,000.00) that Berkeley had in its possession resulting from the maturity of certain U.S. Treasury Bills belonging to Bancrédito.

3.6 Promptly after receiving the letter from Bancrédito, that is, on November 30, 2022, Berkeley responded and ordered the immediate transfer of the funds to Bancrédito through a wire transfer. To that effect Berkeley executed a wire transfer order to Bancrédito in the amount of Twenty-Six Million Dollars (\$26,000,000.00), from an account held by Berkeley at Bancrédito that at the time of the transfer held Twenty-Seven Million Three Hundred and Fifty Thousand Dollars (\$27,350,000.00)

3.7 Even though Berkeley ordered the immediate transfer of the funds, Bancrédito did not process the wire transfer authorization executed by Berkeley.

¹ Related Persons is a defined term which means the persons listed in Exhibit B of the Plan. Berkeley is not part of that list.

² Effective Date is a defined term as follows: “The Plan shall be and become effective on the date of approval of the Plan by the affirmative written consent of the Corporation’s Shareholder and the OCIF”

3.8 On December 15, 2022, Berkeley received another letter from Bancrérito requesting that Berkeley cancel the previous instruction and proceed with a wire transfer of the funds to an account held by Bancrérito at Facebank International in San Juan Puerto Rico.

3.9 Upon receiving the new wire transfer instructions, Berkeley immediately proceeded to execute and send to Bancrérito a wire transfer form with instructions for the immediate transfer of the funds to Bancrérito's account at Face Bank. Furthermore, Berkeley requested that upon completion of the transfer, that Bancrérito proceed to transfer to Berkeley the remaining balance in the account, that is, approximately One Million Three Hundred Thousand Dollars (\$1,300,000.00).

3.10 Berkeley has twice ordered the transfer of the funds requested by Bancrérito and upon information and belief the transfer has not been executed. Moreover, Bancrérito has failed to pay Berkeley its funds under the deposit that upon completion of the wire transfer to Bancrérito the balance would be approximately One Million Three Hundred Thousand Dollars (\$1,300,000.00).

IV. CAUSE OF ACTION (Declaratory Judgment)

4.1 Berkeley restates and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth herein.

4.2 Bancrérito has failed to process the wire transfer of funds it demanded from Berkeley, even though Berkeley executed the corresponding wire transfer order. Bancrérito has also failed to comply with the Plan and pay Berkeley its corresponding balance of funds under deposit.

4.3 Berkeley seeks declaratory judgment from this court to the effect that Berkeley has complied with Bancrérito's demand of funds, and that Berkeley is entitled to receive from Bancrérito the remaining balance of funds under deposit at Bancrérito.

V. PRAYER FOR RELIEF

5.1 Berkeley restates and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth herein.

5.2 Berkeley respectfully request from this Honorable Court the following relief:

- (a) a declaration that Berkeley is not a Related Party as determined by OCIF and recognized in the Plan;
- (b) a declaration that Berkeley holds a deposit account at Bancrédito with funds totaling Twenty-Seven Million Three Hundred and Fifty Thousand Dollars (\$27,350,000.00);
- (c) a declaration that Berkeley has complied with Bancrédito's demand of funds consisting in the transfer of Twenty-Six Million Dollars (\$26,000,000) to the order of Bancrédito;
- (d) a declaration that Berkeley is entitled to receive from Bancrédito the remaining balance of funds under deposit at Bancrédito in the amount of One Million Three Hundred Thousand Dollars (\$1,300,000.00);
- (e) order Bancrédito to execute the wire transfer and pay Berkeley the remaining balance of funds under deposit in the amount of One Million Three Hundred Thousand Dollars (\$1,300,000.00);
- (f) award Berkeley attorney's fees and costs;
- (g) award Berkeley any further relief that it may be entitled as a matter of law or equity, or which the court determines to be just and proper.

VI. DEMAND FOR JURY TRIAL

Berkeley hereby demands a jury trial on all issued so triable.

RESPECTFULLY SUBMITTED.

In San Juan Puerto Rico this 30th day of December 2022.

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